

# EXHIBIT 5

## to Memo iso Motion to Compel Production

**Allen Rose**

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**From:** Ryan Rosner  
**Sent:** Thursday, January 10, 2013 1:25 PM  
**To:** Ryan Rosner  
**Subject:** Exhibit 5

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**From:** Leonard Bennett [<mailto:lenbennett@clalegal.com>]  
**Sent:** Thursday, December 13, 2012 4:06 PM  
**To:** Donna Winters  
**Cc:** Christopher Loveland  
**Subject:** Re: Guimond v. Toyota Motor Credit Corp.

Okay. Continue with Tom gathering documents.

On Dec 13, 2012, at 3:57 PM, Donna Winters wrote:

Len,  
It was my understanding that he was self represented because he received the letter directly from Lewis Perling, however, I have located the complaint and it appears that he was represented by Keith Knowlton in Arizona.

Donna Winters  
Consumer Litigation Associates, P.C.  
763 J. Clyde Morris Blvd., Suite 1-A  
Newport News, VA 23606  
Telephone: 757-930-3660  
Facsimile: 757-930-3662  
[dwinters@clalegal.com](mailto:dwinters@clalegal.com)

This message contains information from Consumer Litigation Associates, P.C. which may be confidential and privileged. If you are not the intended recipient and have receive this transmission in error, please contact (757) 930-3660 to report same.

Begin forwarded message:

**From:** Christopher Loveland <[cloveland@sheppardmullin.com](mailto:cloveland@sheppardmullin.com)>  
**Date:** December 13, 2012 3:50:55 PM EST  
**To:** Leonard Bennett <[lenbennett@clalegal.com](mailto:lenbennett@clalegal.com)>

**Cc:** Donna Winters <[dwinters@clalegal.com](mailto:dwinters@clalegal.com)>, "[trb@tbreedenlaw.com](mailto:trb@tbreedenlaw.com)" <[trb@tbreedenlaw.com](mailto:trb@tbreedenlaw.com)>, Susan Rotkis <[srotkis@clalegal.com](mailto:srotkis@clalegal.com)>, Anna McLean <[AMcLean@sheppardmullin.com](mailto:AMcLean@sheppardmullin.com)>, Ryan Rosner <[RRosner@sheppardmullin.com](mailto:RRosner@sheppardmullin.com)>, Lai Yip <[LYip@sheppardmullin.com](mailto:LYip@sheppardmullin.com)>  
**Subject: RE: Guimond v. Toyota Motor Credit Corp.**

I still do not understand how the attorney-client privilege would apply to a self-represented party. Please provide authority for that proposition. In addition, even if the work product doctrine applied to a pro se party, I still do not understand how the categories of documents at issue (all communications between counsel for the Guimonds and Equifax and its counsel relating to the allegations, prosecution and ultimate settlement of the Equifax case; and the settlement agreement entered into by the parties in the Equifax case) could possibly contain work product. Please explain.

Also, as explained previously below, the documents we seek are directly related to the following allegation in the amended complaint:

Plaintiff Mark Guimond had previously sued Equifax as a result of errors on his credit report. As a result of this, Plaintiff Mark Guimond's credit report was lawfully taken offline or frozen by Equifax. As a result, Mr. Guimond's consumer report was not then available by automated means, but was nonetheless available when a manual request was made by a potential creditor (or other user).

Christopher Loveland  
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## SheppardMullin

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**From:** Leonard Bennett [<mailto:lenbennett@clalegal.com>]  
**Sent:** Wednesday, December 12, 2012 9:53 PM  
**To:** Christopher Loveland  
**Cc:** Donna Winters; [trb@tbreedenlaw.com](mailto:trb@tbreedenlaw.com); Susan Rotkis; Anna McLean; Ryan Rosner; Lai Yip  
**Subject:** Re: Guimond v. Toyota Motor Credit Corp.

Work product still applies, even as to non-attorneys. And the mediation privilege (e.g. any communications he had in negotiating a settlement with Equifax) still applies.

And of course we could file a privilege log OR we could move for a PO. Its our option. And as its just as burdensome to file a motion, that is how we will proceed.

Would you please tell me why you believe these documents are discoverable? What evidence do you think they could provide directly or through discovery?

Len Bennett

On Dec 12, 2012, at 9:50 PM, Christopher Loveland wrote:

If your client was self-represented, why would there be any work product or attorney-client privileged communications in the Equifax case? Also, unless I am missing something, it seems that to the extent any documents exist that properly fall under the mediation privilege, they should be listed on a privilege log and it would be incumbent on us to move to compel if we believe that the privilege does not apply. A protective order seems unnecessary under the circumstances. I would also note that our narrowed document requests seek communications between the parties and not with a mediator.

On Dec 12, 2012, at 5:06 PM, "Leonard Bennett" <[lenbennett@clalegal.com](mailto:lenbennett@clalegal.com)> wrote:

Thank you. We will move for a PO only as to numbers 2 and 3 in your email and not on privilege grounds for 3. Settlement discussions between the client who was self represented and Eqx remain mediation privileged. Further, none of this is calculated to lead to the discovery of relevant evidence. The Eq diversion is simply an effort to cause work. Your own docs show the Eq inquiry.

Sent from my iPhone

On Dec 12, 2012, at 4:47 PM, "Christopher Loveland" <[cloveland@sheppardmullin.com](mailto:cloveland@sheppardmullin.com)> wrote:

We are willing to modify the scope of document request 1 by limiting it to the following documents (1) all pleadings in the Equifax case; (2) all communications between counsel for the Guimonds and Equifax and its counsel relating to the allegations, prosecution and ultimate settlement of the Equifax case; and (3) the settlement agreement entered into by the parties in the Equifax case. Given our proposed narrowing of the scope of document request 1, a privilege log is not necessary for that request. The settlement agreement and related documents are not privileged, and any confidentiality concerns may be addressed pursuant to the terms of the parties' protective order in this case. That is what a protective order is for. Let us know if this proposal is acceptable.

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**From:** Leonard Bennett  
[mailto:[lenbennett@clalegal.com](mailto:lenbennett@clalegal.com)]  
**Sent:** Wednesday, December 12, 2012 8:45 AM  
**To:** Christopher Loveland  
**Cc:** Donna Winters; [trb@tbreedenlaw.com](mailto:trb@tbreedenlaw.com); Susan Rotkis; Anna McLean; Ryan Rosner; Lai Yip  
**Subject:** Re: Guimond v. Toyota Motor Credit Corp.

What question? Your request is over broad. It seeks work product and privileged communications from the Eqx case. No way those are discoverable. Even the logging of them would be a concern. So we move for a PO. The settlement agreement is not discoverable. Lots of law for us there.

Add to that the very limited range of discovery available to you before January: whether the notice that was sent was accurate and specific.

Please confirm that you have narrowed RFP 1.

Sent from my iPhone

On Dec 12, 2012, at 8:09 AM, "Christopher Loveland" <[cloveland@sheppardmullin.com](mailto:cloveland@sheppardmullin.com)> wrote:

What is the answer to our question?

Christopher Loveland  
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**From:** Leonard Bennett  
[[mailto:lenbennett@clal  
egal.com](mailto:lenbennett@clal<br/>egal.com)]  
**Sent:** Wednesday,  
December 12, 2012  
5:07 AM  
**To:** Christopher  
Loveland  
**Cc:** Donna  
Winters; [trb@tbreedeni  
aw.com](mailto:trb@tbreedeni<br/>aw.com); Susan Rotkis;  
Anna McLean; Ryan  
Rosner; Lai Yip  
**Subject:** Re: Guimond  
v. Toyota Motor Credit  
Corp.

I understand your  
position. We will  
move for a PO and  
fees.

Len

On Dec 11, 2012, at  
9:58 PM, Christopher  
Loveland wrote:

Mr. Bennett,

We disagree that our  
document requests are  
improper. As to your  
first item below, we are  
willing to agree that  
privileged  
communications with  
your clients that  
occurred after the  
denial of their credit by  
TMCC that relate to the  
allegations in the  
complaint filed in this  
case do not need to be  
included on a privilege  
log. We likewise would  
not log privileged  
communications with  
TMCC relating to the

allegations in the Complaint that occurred after service of the Complaint. If other privileged communications exist with your clients that somehow would be responsive to our document requests, they should be included on a privilege log absent a further explanation in a meet and confer as to what other categories of privileged communications exist.

With respect to your second item, there are allegations regarding the Equifax lawsuit in the Amended Complaint (see, e.g., paragraph 5) and we certainly are entitled to discovery relating to those allegations. We also are entitled to determine, among other things, the parameters of Equifax's freezing of the plaintiffs' credit reports. In addition, it is unclear from your email why you believe privileged communications that are otherwise responsive to discovery requests do not need to be logged. Please explain the basis for your position. Finally, to the extent there is a concern about a confidentiality provision in the Equifax settlement agreement, as indicated in your

Rule 26 disclosures, the agreement should be designated confidential under the parties' protective order and produced.

Chris

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**From:** Leonard Bennett  
[<mailto:lenbennett@clal.egal.com>]

**Sent:** Tuesday,  
December 11, 2012  
4:28 PM

**To:** Christopher  
Loveland; Donna  
Winters

**Cc:** [trb@tbreedenlaw.com](mailto:trb@tbreedenlaw.com);  
Susan Rotkis; Anna  
McLean; Ryan Rosner;  
Lai Yip

**Subject:** Re: Guimond  
v. Toyota Motor Credit  
Corp.

Counsel:

I am writing to meet  
and confer with you  
regarding this case,  
prior to our intended  
filing of a Motion for  
a Protective  
Order. Your  
discovery requests for  
production are  
improper as follows:

First, we ask that the  
Parties agree that  
correspondence to,  
from or generated  
within the litigation  
law firms in this case  
are not subject to  
these (or our)  
requests. this will  
avoid the need for a  
Rule 26b5 log for  
these clearly  
undiscoverable



documents. This concern is generally stated as to nearly all of your requests. In addition:

RFP 1. You are not entitled to documents regarding our client's lawsuit as to Equifax as we have removed the allegations based on retaliation. Further, many of these documents include correspondence that is otherwise privileged - mediation, work product and atty-client. We do not intend to file a privilege log and will prior to our deadline instead move for a PO.

Len Bennett

On Dec 11, 2012, at 2:44 PM, Christopher Loveland wrote:

Please find attached a copy of defendant's first requests for production of documents. Per the parties' agreement, a Word version also is attached.

[Christopher Loveland](#)  
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[cloveland@sheppardmullin.com](mailto:cloveland@sheppardmullin.com) | [Bio](#)

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Circular 230

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